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MATTCO FORGE, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

17 CALIFORNIA COMMUNITIES
18 AGAINST TOXICS, a non-profit
public benefit association.

19 Plaintiff.

20 | vs.

MAITCO FORGE, INC., a
California corporation.

23 Defendants.

Case No.: 2:17-cv-03793-TJH-ASx

[PROPOSED] CONSENT DECREE
AND ORDER

**(Federal Water Pollution Control Act,
33 U.S.C. § 1251 *et seq.*)**

Judge: Hon. Terry J. Hatter

1 **WHEREAS**, California Communities Against Toxics ("CCAT" or "Plaintiff") is
2 a non-profit public benefit association of community groups and concerned citizens
3 around the State of California, with its main office in Rosamond, California;

4 **WHEREAS**, CCAT is dedicated to working with communities to advocate for
5 environmental justice and pollution prevention. CCAT has members living in and
6 around Paramount, as well as throughout the Los Angeles River Watershed. CCAT and
7 its members are deeply concerned with protecting public health and the environment in
8 and around their communities;

9 **WHEREAS**, Matco Forge, Inc. ("Matco" or "Defendant") owns and operates an
10 industrial facility at and/or near 16443 Minnesota Avenue and 7530 Jackson Street in
11 Paramount, California ("Facility");

12 **WHEREAS**, Matco as a matter of corporate policy has set as a priority being a
13 good corporate citizen focused on making its local communities better places to live and
14 work;

15 **WHEREAS**, on March 2, 2017, CCAT sent a sixty (60) day notice letter ("Notice
16 Letter") to Defendant, the United States Environmental Protection Agency ("EPA"),
17 EPA Region IX, the State Water Resources Control Board ("State Board") and the
18 Regional Water Quality Control Board ("Regional Board"), stating its intent to file suit
19 for alleged violations of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, *et
seq.* ("Clean Water Act" or "CWA");

21 **WHEREAS**, the Notice Letter alleged violations of the CWA for Defendant's
22 alleged discharges of pollutants into storm drains and receiving waters, Reach 2 of the
23 Los Angeles River ("River"), Reach 1 of the River, the River's Estuary, San Pedro Bay
24 and the Pacific Ocean (collectively "Receiving Waters"), in alleged violation of National
25 Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001
26 [State Board] Water Quality Order No. 97-03-DWQ ("1997 Permit"), as superseded by
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1 Order No. 2014-0057-DWQ ("2015 Permit"). The 1997 Permit and/or 2015 Permit may
2 be referred to generically as the "Storm Water Permit;"

3 **WHEREAS**, during the 60-Day notice period to the present, Matteo made
4 significant efforts to review stormwater management practices, including installation of
5 new stormwater management equipment at the Facility;

6 **WHEREAS**, during the 60-Day notice period to the present CCAT and Matteo made
7 have been in comprehensive, good-faith settlement negotiations;

8 **WHEREAS**, sampling of stormwater discharges at the Facility have shown
9 significant improvement, with most sample results below the numeric limits set forth in
10 the EPA's 2015 Multi-Sector General Permit.

11 **WHEREAS**, on May 19, 2017 CCAT filed a complaint ("Complaint") against
12 Defendant in the United States District Court, Central District of California entitled
13 *California Communities Against Toxics vs. Mattco Forge, Inc.*;

14 **WHEREAS**, the Defendant denies all allegations of the Complaint;

15 **WHEREAS**, Plaintiff and Defendant (collectively referred to herein as the
16 "Settling Parties" or "Parties") agree that it is in the Parties' mutual interest to enter into
17 a Consent Decree setting forth terms and conditions appropriate to resolving the
18 allegations set forth in the Complaint without further proceedings;

19 **WHEREAS**, all actions taken by the Defendant pursuant to this Consent Decree
20 shall be made in compliance with all applicable federal, state and local rules and
21 regulations.

22 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE
23 SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT AS
24 FOLLOWS:**

25 1. The Court has jurisdiction over the subject matter of this action pursuant to
26 Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

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1 2. Venue is appropriate in the Central District Court pursuant to Section
2 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the Facility at which the alleged
3 violations are taking place is located within this District;

4 3. The Complaint states a claim upon which relief may be granted against
5 Defendant pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

6 4. CCAT has standing to bring this action;

7 5. The Court shall retain jurisdiction over this matter for purposes of
8 interpreting, modifying or enforcing the terms of this Consent Decree, for as long as is
9 necessary for the Court to resolve any motion to enforce this Consent Decree.

10 I. **OBJECTIVES**

11 6. It is the express purpose of the Parties entering into this Consent Decree to
12 further the objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*, and to
13 resolve those issues alleged by CCAT in its Complaint. These objectives include
14 compliance with the provisions of this Consent Decree, and compliance with the
15 requirements of the 2015 Permit and all applicable provisions of the CWA which are the
16 subject of this Consent Decree—specifically Receiving Water Limitations A, B and C at
17 Section VI of the 2015 Permit, and Effluent Limitations A, B and C at Section V of the
18 2015 Permit, which require, *inter alia*, that Defendant ensure that industrial storm water
19 discharges and authorized non-stormwater discharges do not cause or contribute to an
20 exceedance of any applicable Water Quality Standards (“WQS”), and implement Best
21 Management Practices (“BMPs”) that comply with the Best Available Technology
22 (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of
23 the 2015 Permit. BMPs must be developed and implemented to prevent discharges or to
24 reduce contamination in storm water discharged from the Facility in compliance with
25 this Consent Decree.

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1 **II. EFFECTIVE DATE AND TERMINATION**

2 7. The term "Effective Date," as used in this Consent Decree, shall mean the
3 date the Court enters the final Consent Decree.

4 8. This Consent Decree will terminate on its own terms three (3) years from
5 the Effective Date (the "Termination Date"), unless there is a prior ongoing, unresolved
6 dispute regarding Defendant's compliance with its terms as described in a Notice of
7 Dispute filed with the Court prior to the Termination Date, which Notice shall identify
8 the issue in dispute. The filing of such a Notice of Dispute shall extend the Termination
9 Date until the Court determines the dispute has been resolved and thereupon dismisses
10 the case, or, alternatively, if the Settling Parties file a stipulation for dismissal.

11 9. Matco may move the Court to terminate the Consent Decree at any time
12 provided that the following conditions, or such alternative conditions to which the
13 Settling Parties agree in writing after compliance with the meet and confer provisions of
14 paragraph 43 below, are satisfied:

- 15 a. Defendant has fully implemented all measures detailed in paragraph 15 below,
16 and all other applicable requirements to be completed under this Consent
17 Decree prior to the date on which the Defendant moves for termination;
- 18 b. Defendant has revised and fully implemented its Storm Water Pollution
19 Prevention Plans ("SWPPP") and Monitoring and Reporting Programs
20 ("M&RP") pursuant to the requirements of this Consent Decree and the 2015
21 Permit;
- 22 c. There are no ongoing, unresolved disputes regarding Defendant's compliance
23 with this Consent Decree, including but not limited to any dispute related to
24 the payment of fees/costs, Supplemental Environmental Project ("SEP")
25 implementation, compliance monitoring fees, implementation of storm water
26 and non-storm water control BMPs, and compliance with numeric levels
27 detailed below at Table 1;

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- d. All payments required under sections F (paras. 35 and 36) and G (paras. 39 and 40) of this Consent Decree are made; and
- e. Following the Effective Date of this Consent Decree, monitoring data from four (4) consecutive storm water samples collected at each discharge point demonstrate pollutant concentrations in stormwater discharges do not exceed the numeric levels in Table 1;

10. To terminate early as provided above, Defendant shall file a motion for early termination with the Court. Defendant shall provide Plaintiff and its counsel with written notice at least thirty-five (35) days prior to filing any motion for termination of the Consent Decree.

11. Upon receipt of the written request to terminate, CCAT may conduct an inspection of the Facility within thirty (30) calendar days and Mattco will work with CCAT to schedule and accommodate the inspection, if requested, within the 30-day period. During the Site Inspection, Defendant shall allow CCAT and/or its representatives access to the Facility's SWPPP, M&RP, and storm water monitoring records. Further, Defendant shall allow CCAT and/or its representatives to collect split samples of storm water or non-stormwater discharges during the site inspection, if applicable, at the Facility. CCAT shall be permitted to take photographs or video recording during any Site Inspection and will, upon request, provide photographs and/or video to Mattco within fourteen (14) calendar days. Notwithstanding the foregoing, CCAT agrees that all individuals participating in a Site Inspection will execute, and be subject to, waivers, releases and similar agreements as were executed in connection with the Site Inspection conducted on June 26, 2017, including but not limited to those forms establishing restrictions on allowed recorded documentary images or depictions.

12. Unless there is an ongoing, unresolved dispute regarding Defendant's compliance with this Consent Decree, thirty-five (35) calendar days after written notice

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1 was given, Defendant may move the Court to terminate the Consent Decree and CCAT
2 shall not oppose the motion.

3 **III. COMMITMENTS OF THE PARTIES**

4 **A. Industrial Storm Water Pollution Control Measures**

5 13. Any non-stormwater discharges ("NSWDs") from the Facility must be
6 authorized by the 2015 Permit or another NPDES permit.

7 14. All storm water pollution measures required by this Consent Decree will be
8 implemented at the Facility. Any disputes over the adequacy and/or timing of the
9 implementation of BMPs shall be resolved pursuant to the dispute resolution provisions
10 of this Consent Decree, set out in Section IV below.

11 15. BMP Plan. Mattco has or will implement the following additional BMPs by
12 April 1, 2018, or the Effective Date of this Consent Decree, whichever occurs later;

- 13 a. Install, maintain and replace (as necessary) appropriate covering on presses at
14 facility's northwestern perimeter (e.g. heavy duty water-proof tarps, industrial
poly sheeting) to prevent stormwater contact;
- 15 b. Permanently plug the small drain hole in the southwestern corner of the
Facility assuming it is not operationally needed for drainage;
- 16 c. Install, maintain and replace as necessary Filtrexx Envirosocks or equivalent
filter BMP at Discharge & Sampling Points Nos. 1, 2, 3, and 4, as identified on
the attached Site Map. This BMP is not feasible at Discharge & Sampling
Point No. 5 due to high traffic and any exceedances will be addressed through
Action Plan preparation/assessment, or via dispute resolution procedures if
necessary;
- 17 d. Install, maintain and replace as necessary Ultra-Drain Guard, Heavy Metal
model catch basin inserts (or equivalent) at all storm drains;
- 18 e. Fill all substantial or obvious cracks and crevices in ground surfaces using
cement, epoxy or similar permanent and non-polluting material with a goal to
limit the amount of metal dust/particulate that is easily mobilized by
stormwater;
- 19 f. Weekly sweeping of all outside ground surfaces potentially affected by
industrial activity, including through aerial deposition, with Nilsick CS7010
sweeper or equivalent, including the area of track out on Minnesota Ave. at
gate northeast of Tool Building;

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- g. Between May 1 and September 30 of each year, monthly sweeping/vacuuming of areas that are not effectively cleaned by larger mechanized sweeper(s) (e.g. under stored materials, along buildings, around outdoor storage);
- h. Between October 1 and April 30, weekly sweeping/vacuuming of areas that are not effectively cleaned by larger mechanized sweeper(s) (e.g. under stored materials, along building edges, outdoor storage);
- i. Remove and replace peeling paint on southern perimeter of Tool Building;
- j. Maintain an adequately sized secondary containment system for waste oil storage areas and/or move waste oil structures indoors;
- k. Immediately and thoroughly clean any and all spills or leaks of oil;
- l. Twice annually, including on or about October 1 of each year, thoroughly clean as necessary all areas likely affected by aerial deposition of industrial emissions using a pressure washer or equivalent, and properly dispose of any produced wastes;
- m. Install a rain gage, and maintain contemporaneous records of each storm event generating more than 0.1 inches of rain.

12 16. The goal of the BMPs outlined in paragraph 15 is ensure that Matteo
13 achieves and maintains full compliance with the spirit and letter of the Storm Water
14 Permit during and beyond the term of this Consent Decree. Matco shall implement and
15 maintain additional BMPs, which may include the installation of an active stormwater
16 treatment system, if sampling data indicates such additions are appropriate due to
17 significant and/or repeated exceedances of the numeric limits contained in TABLE I at
18 paragraph 22 below.

B. Monitoring and Reporting Program (M&RP)

17. Sample Frequency. Defendant shall collect storm water samples in the
event that discharges occur at the Facility from at least four (4) qualifying storm events
per Reporting Year (July 1 to the following June 30) in accordance with Section XI.B. of
the 2015 Permit. Any failure to sample a discharge from each discharge location at the
Facility until the specified four (4) qualifying storm events per Reporting Year have
been sampled shall be documented and submitted to CCAT within ten (10) days of the
date a sample was required to have been collected but was not.

1 18. Sample Analysis. The Defendant shall analyze samples collected in
2 accordance with sampling and analysis procedures specified by the Permit for Total
3 Suspended Solids, pH, Oil & Grease, zinc, aluminum, iron, hexavalent chromium,
4 nickel, lead, titanium, and cobalt, as well as such additional constituents required by the
5 Storm Water Permit except magnesium¹. The Defendant shall select laboratories and
6 analytical limits such that, at a minimum, the method detection limits are below the
7 numeric limits in Table 1.

8 19. Discharge Points. The Defendant shall collect reportable storm water
9 samples from each of the following locations at the Facility, as identified on the attached
10 Site Map:

11 a. Sample Point 1;
12 b. Sample Point 2;
13 c. Sample Point 3;
14 d. Sample Point 4;
15 e. Sample Point 5.

16 20. Written Report. Defendant shall submit a written report to CCAT at the
17 end of each Reporting Year listing all storm events that occurred and resulted in a
18 discharge at any of the Facility's stormwater outfalls. The report shall be submitted on
19 or before July 30 every year during the term of this Consent Decree and must include a
table summarizing analytical results from Facility's storm water samples and comparing
those results to the numeric limits in Table 1.

20 21. Revising the M&RP. Within thirty (30) calendar days of the Effective Date
21 of this Consent Decree, Defendant shall revise its M&RP within its SWPPP for the
22 Facility to incorporate the requirements of this Consent Decree and the 2015 Permit.
23 The Defendant shall submit the revised M&RP to CCAT for review and comment as
24 soon as it is completed but in any event no later than within thirty (30) calendar days
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26 ¹ There will be no Numeric Action Level associated with Magnesium because of the issues related detecting limit for this
27 constituent pending Regional Water Board concurrence.

1 following the Effective Date. CCAT shall provide comments, if any, to the Defendant:
2 within thirty (30) calendar days following receipt of the revised M&RP. The Defendant
3 shall incorporate Plaintiff's comments into the M&RP, or shall justify in writing why
4 any comment is not incorporated within thirty (30) calendar days of receiving
5 comments. Any disputes over the adequacy of the revised M&RP shall be resolved
6 pursuant to the dispute resolution provisions set out in Section IV below.

7 **C. Numeric Limits**

8 22. Numeric Limits. If sampling at any single discharge point identified above
9 at paragraph 19 demonstrate an exceedance of four (4) numeric limits in Table 1 in a
10 single reporting year, Matteo shall comply with the relevant requirements specified
11 below.

12 TABLE I. NUMERIC LIMITS

Contaminant	Numeric Limits
Total Suspended Solids	100 mg/L
pH	6.5-8.5
Oil and Grease	15 mg/L
Zinc	0.117 mg/L
Aluminum	0.75 mg/L
Iron	1.0 mg/L
Hexavalent Chromium	0.016 mg/L
Arsenic	0.34 mg/L
Cadmium	0.0043 mg/L
Nickel	0.47 mg/L
Lead	0.0816 mg/L
Titanium	Report only
Magnesium	Report only
Cobalt	Report only

22 23. Action Plan for Table 1 Exceedances during the Consent Decree. In any
23 Reporting Year during which sampling at any single discharge point demonstrates an
24 exceedance of four (4) or more numeric limits in Table 1, Matteo shall prepare and
25 submit a plan for reducing and/or eliminating the discharge of those pollutants ("Action
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1 Plan") to CCAT by July 1 following the Reporting Year in which the exceedances
2 giving rise to the obligation to submit an Action Plan occurred.

3 24. Action Plan Requirements. Each Action Plan submitted shall be in writing
4 and shall include, at a minimum: (1) the identification of the pollutant(s) exceeding
5 Table 1's numeric limits, (2) an assessment of the source of each exceedance, (3) the
6 identification of additional BMPs that will be implemented to achieve compliance with
7 the respective numeric limits, and (4) time schedules for implementing proposed BMPs,
8 which shall not exceed the following October 1 unless otherwise agreed by the Parties in
9 writing.

10 25. Action Plan Review. CCAT shall have 30 days from receipt of Defendant's
11 Action Plan to provide Defendant with comments. Within 30 days from the date of
12 receipt of CCAT's written comments on the Action Plan, Defendant shall provide CCAT
13 with a written explanation as to the reasons Defendant is not incorporating any particular
14 CCAT comment into its Action Plan. Any disputes as to the adequacy of the Action Plan
15 shall be resolved pursuant to the dispute resolution provisions set out in Section IV
16 below.

17 26. If any structural BMPs require any government agency approval, then
18 Defendant shall contact CCAT to request an extension of the deadline, if necessary, to
19 implement the structural BMPs requiring agency approval. CCAT shall not
20 unreasonably withhold consent to any extension request.

21 27. Defendant shall have until October 1 following the Reporting Year in which
22 the obligation to submit an Action Plan occurred to implement the Action Plan.
23 Defendant shall notify CCAT in writing when the Action Plan has been implemented.

24 D. **Storm Water Pollution Prevention Plan**

25 28. SWPPP Revisions. Within thirty (30) calendar days of the Effective Date
26 of this Consent Decree, Defendant shall revise the SWPPP to comply with Section X of
27 the 2015 Permit and this Consent Decree. The Defendant shall submit the revised

1 SWPPP to CCAT for review and comment as soon as it is completed, but in any event
2 no later than thirty (30) calendar days following the Effective Date. CCAT shall provide
3 comments, if any, to Defendant within thirty (30) calendar days of receipt of the
4 SWPPP. Defendant shall incorporate Plaintiff's comments into the SWPPP, or explain in
5 writing why any comment is not incorporated, within thirty (30) calendar days of
6 receiving comments. Any disputes as to the adequacy of the revised SWPPP shall be
7 resolved pursuant to the dispute resolution provisions set out in Section IV below.

8 **E. Employee Training**

9 29. Within thirty (30) calendar days of the Effective Date, Defendant shall
10 review and revise its employee training program established in its SWPPP to comply
11 with the requirements of this Consent Decree and the 2015 Permit, including any
12 training materials, as necessary, for implementation of the training program ("Training
13 Program").

14 30. The Training Program shall provide (a) that there be a sufficient number of
15 employees delegated to achieve compliance with the Storm Water Permit and this
16 Consent Decree, and (b) that these employees are properly trained to perform the
17 required compliance activities under the 2015 Permit and this Consent Decree. Such
18 Training Program shall be specified in the SWPPP.

19 31. The Training Program shall require specific training to include at least the
20 following:

21 a. Non-Storm Water Discharge Training. The Defendant shall train all
22 employees about the 2015 Permit's prohibition of non-storm water discharges so that
23 employees know what non-storm water discharges are, how to detect them, and how to
24 prevent them;

25 b. BMP Training. The Defendant shall train all employees responsible for
26 BMP implementation and maintenance to ensure that BMPs are used effectively to
27 prevent the exposure, discharge, and/or treatment of storm water at the Facility.

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1 c. Sampling Training. The Defendant shall train all individuals collecting
2 samples at the Facility pursuant to this Consent Decree or the 2015 Permit on the proper
3 sampling protocols, including chain of custody requirements, to ensure storm water
4 and/or non-storm water samples are properly collected, stored, and submitted to a
5 certified laboratory;

6 d. Visual Observation Training. The Defendant shall provide training to all
7 individuals performing visual observations at the Facility pursuant to this Consent
8 Decree and the 2015 Permit.

9 32. Training shall be provided by a Qualified Industrial Storm Water
10 Practitioner ("QISP", as defined in Section IX.A of the 2015 Permit) familiar with the
11 requirements of this Consent Decree and the 2015 Permit, and shall be repeated as
12 necessary to ensure that all relevant employees are familiar with the requirements of this
13 Consent Decree, the 2015 Permit, and the Facility's SWPPP. All relevant new staff
14 shall receive this training before assuming responsibilities for implementing the SWPPP
15 or the M&RP.

16 33. The Defendant shall maintain training records to document compliance with
17 this paragraph, and shall provide CCAT with a copy of these records within fourteen
18 (14) days of receipt of a written request.

19 34. Annual Site Inspections. CCAT may conduct one annual site inspection
20 ("Site Inspection") on terms substantially identical to those agreed to by the Settling
21 Parties for the June 26, 2017 site visit. Site Inspections shall occur during normal
22 business hours, and CCAT will provide Defendant with as much notice as possible, but
23 at least twenty-four (24) hours notice prior to a Site Inspection in anticipation of wet
24 weather, and seventy-two (72) hours notice during dry weather. Notice will be provided
25 by telephone and electronic mail. CCAT agrees that all individuals participating in a Site
26 Inspection will execute, as necessary, waivers, releases and similar agreements.
27 Defendant shall allow CCAT and/or its representatives to collect split samples of storm
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1 water or non-stormwater discharges during the site inspection, and/or collect swab
2 samples taken from surfaces likely to receive aerial deposition of industrial emissions
3 from the Facility. All costs associated with the collection of water or swab samples shall
4 be wholly borne by CCAT.

5 **F. Compliance Monitoring and Reporting**

6 35. CCAT's Compliance Monitoring. Defendant shall make a one-time
7 payment a total of two thousand dollars (\$2,500.00) to compensate CCAT for costs and
8 fees to be incurred for monitoring Defendant's compliance with this Consent Decree.
9 Payment shall be made within fifteen (15) days of the Effective Date payable to
10 California Communities Against Toxics addressed to: CCAT, PO Box 845, Rosamond,
11 CA 93560 and sent via courier or overnight delivery. Failure to submit payment as
12 required under this paragraph will constitute a breach of the Consent Decree.

13 36. Action Plan Payments. Defendant shall pay \$1,500.00 for each Action Plan
14 for which CCAT submits substantive comments under paragraph 25 above. Payment
15 shall be made on the date the Action Plan is submitted payable to California
16 Communities Against Toxics addressed to: CCAT, PO Box 845, Rosamond, California
17 93560, and sent via courier or overnight delivery. Failure to submit a payment as
18 required under this paragraph will constitute a breach of the Consent Decree.

19 37. Data Reporting. During the life of this Consent Decree, Defendant shall
20 provide Plaintiff with a copy of all Consent Decree and 2015 Permit compliance and
21 monitoring data, including any inspection reports which Mattco is required to maintain
22 under the 2015 Permit, on a quarterly basis. The Defendant shall provide Plaintiff with
23 all stormwater sampling and analytical results taken at the Facility within fifteen (15)
24 days of the Defendant's receipt of all results for each sampling event.

25 38. Document Provision. During the life of this Consent Decree, Defendant
26 shall copy Plaintiff on all documents and communications related to stormwater
27 discharges at the Facility that are submitted to the Regional Board, the State Board,
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1 and/or any State, local, county, or municipal agency authorized to regulate stormwater.
2 Such reports and documents shall be provided to CCAT concurrently as they are sent to
3 the agencies and/or municipalities. Any correspondence related to stormwater discharges
4 received from any such State, county, or municipal regulatory agency, shall be provided
5 to CCAT within five (5) business days of receipt by the Defendant.

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7 **G. Environmental Project, Reimbursement of Litigation Fees and Costs,
8 and Stipulated Penalties**

9 39. Environmental Project. The Defendant agrees to make a payment of thirty
10 thousand dollars (\$30,000) within thirty (30) calendar days of the Effective Date to As
11 You Sow for a project related to water quality designed to analyze, reduce, prevent, or
12 otherwise mitigate the ecological and/or public health effects of storm water and/or non-
13 stormwater discharges into Los Angeles area waterbodies. The payment shall be mailed
14 via certified mail or overnight delivery to: As You Sow; Attn: CCAT v Matco Forge,
15 Inc.; 1611 Telegraph Avenue, Suite 1450, Oakland, CA 94612.

16 40. Reimbursement of Plaintiffs' Fees and Costs. The Defendant agrees to
17 partially reimburse Plaintiff for its investigation fees and costs, consultant fees and costs,
18 reasonable attorneys' fees, and other costs incurred as a result of investigating and filing
19 the lawsuit, and negotiating a resolution of this matter in an amount totaling twenty-nine
20 thousand five-hundred dollars (\$29,500.00). All such payments shall be made payable
21 to Anacapa Law Group, Inc. and delivered by certified mail or overnight delivery at 508
22 East Haley Street, Santa Barbara, CA 93103.

23 **H. Agency Review of Consent Decree**

24 41. Plaintiff shall submit this Consent Decree to the United States Department
25 of Justice and the United States Environmental Protection Agency (the Federal
26 Agencies), within three (3) business days of the final signature of the Parties, for agency
27 review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five
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1 (45) calendar days after receipt by both agencies, as evidenced by written
2 acknowledgement of receipt by the agencies or the certified return receipts, copies of
3 which shall be provided to Defendant. In the event that the Federal Agencies object to
4 entry of this Consent Decree, the Parties agree to meet and confer to attempt to resolve
5 the issue(s) raised by the Federal Agencies.

6 42. Plaintiff shall notify the Court of the receipt date by the Agencies, as
7 required by 40 C.F.R. § 135.5, in order to coordinate the Court's calendar to the 45 day
8 review period.

9 **IV. DISPUTE RESOLUTION**

10 43. This Court shall retain jurisdiction over this matter for the purposes of
11 adjudicating all disputes among the Parties that may arise under the provisions of this
12 Consent Decree. The Court shall have the power to enforce this Consent Decree with all
13 available legal and equitable remedies, including contempt.

14 44. Meet and Confer. Either party to this Consent Decree may invoke the
15 dispute resolution procedures of this Section IV by notifying the other party in writing of
16 the matter(s) in dispute and of the disputing party's proposal for resolution under this
17 Section. The Parties shall then meet and confer in an attempt to resolve the dispute no
18 later than thirty (30) calendar days from the date of the notice.

19 45. If the Parties cannot resolve the dispute within 30 days after the meet and
20 confer described in paragraph 44, the Parties agree to request a settlement meeting
21 before the Judge assigned to this action. In the event that the Parties cannot resolve the
22 dispute by the conclusion of the settlement meeting with the Judge, the Parties agree to
23 submit the dispute via motion to the District Court.

24 46. In resolving any dispute arising from this Consent Decree, the Court shall
25 have discretion to award attorneys' fees and costs to either party. The relevant portions
26 of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil
27 Procedure and applicable case law interpreting such provisions shall govern the

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1 allocation of fees and costs in connection with the resolution of any disputes before the
2 District Court. Plaintiff and Defendant agree to file any waivers necessary for the Judge
3 to preside over any settlement conference and motion practice.

4 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

5 47. In consideration of the above, upon the Effective Date of this Consent
6 Decree, the Parties hereby fully release, except for claims for Defendant's failure to
7 comply with this Consent Decree and as expressly provided below, each other and their
8 respective successors, assigns, officers, agents, employees, and all persons, firms and
9 corporations having an interest in them, from any and all alleged CWA violations
10 claimed in the Complaint, up to and including the Termination Date of this Consent
11 Decree.

12 48. Nothing in this Consent Decree limits or otherwise affects Plaintiff's or
13 Defendant's respective rights to address or take any position that it deems necessary or
14 appropriate in any formal or informal proceeding before the Regional Board, EPA, or
15 any other judicial or administrative body on any other matter or claim not addressed in
16 this Consent Decree and relating to the Defendant.

17 49. Neither the Consent Decree nor any payment pursuant to the Consent
18 Decree shall constitute or be construed as a finding, adjudication, or acknowledgement
19 of any fact, law or liability, nor shall it be construed as an admission of violation of any
20 law, rule, or regulation. The Defendant maintains and reserves all defenses they may
21 have to any alleged violations that may be raised in the future.

22 50. Force Majeure. The Defendant shall notify CCAT pursuant to the terms of
23 this paragraph, when timely implementation of the requirements set forth in this Consent
24 Decree becomes impossible, despite the timely good-faith efforts of the Defendant, due
25 to circumstances beyond the reasonable control of the Defendant or its agents, and which
26 could not have been reasonably foreseen and prevented by the exercise of due diligence
27 by the Defendant. Any delays due to Defendant's failure to make timely and bona fide
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1 applications and to exercise diligent efforts to obtain necessary permits, or due to normal
2 inclement weather, shall not, in any event, be considered to be circumstances beyond
3 Defendant's control. In no circumstances shall a claim of inability to pay be considered
4 Force Majeure.

5 a. If the Defendant claims impossibility, it shall notify CCAT in writing
6 within twenty-one (21) calendar days of the date that the Defendant first knew of the
7 event or circumstance that caused or would cause a violation of this Consent Decree.
8 The notice shall describe the reason for the nonperformance and specifically refer to this
9 Section. It shall describe: i) the anticipated length of time the delay may persist; ii) the
10 cause or causes of the delay; iii) the measures taken or to be taken by the Defendant to
11 prevent or minimize the delay; iv) the schedule by which the measures will be
12 implemented; and v) the anticipated date of compliance. The Defendant shall adopt all
13 reasonable measures to avoid and minimize such delays.

14 b. The Parties shall meet and confer in good-faith concerning the non-
15 performance and, where the Parties concur that performance was or is impossible,
16 despite the timely good faith efforts of the Defendant, due to circumstances beyond the
17 control of Defendant that could not have been reasonably foreseen and prevented by the
18 exercise of due diligence by the Defendant, the Parties shall agree upon new deadlines.

19 c. If CCAT disagrees with the Defendant's notice, or in the event that the
20 Parties cannot timely agree on the terms of new performance deadlines or requirements,
21 either party shall have the right to invoke the Dispute Resolution Procedure pursuant to
22 Section IV. In such proceeding, the Defendant shall bear the burden of proving that any
23 delay in performance of any requirement of this Consent Decree was caused or will be
24 caused by force majeure and the extent of any delay attributable to such circumstances.

25 d. If applicable, Defendant shall diligently file and pursue required
26 applications for permits, consents, and approvals for the structural BMPs described in
27 this Consent Decree, and shall diligently pursue the procurement of contractors, labor
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1 and materials to complete all such BMPs by the deadlines set forth herein, and shall use
2 reasonable good faith efforts to meet these deadlines. Defendant shall be excused from
3 meeting the deadlines in this Consent Decree for a specific BMP if circumstances
4 beyond the reasonable control of Defendant in obtaining any required governmental
5 permits, consents, or approvals due to the permitting agency's actions or inactions or
6 delays associated with the fabrication and/or construction of materials prevent the
7 attainment of the deadline for a specific BMP. Such delays may be excused if all of the
8 following requirements are met: 1) Defendant has notified CCAT via email and first
9 class mail within ten (10) days of first learning about the anticipated delay; and 2)
10 Defendant continues to exercise due diligence and reasonable good faith efforts in
11 pursuing the permitting and implementation of the BMP in question and proposes a
12 reasonable revised deadline. Any excused delay shall not excuse Defendant from
13 implementing its other, unexcused obligations under this Consent Decree.

14 **VI. MISCELLANEOUS PROVISIONS**

15 51. Construction. The language in all parts of this Consent Decree shall be
16 construed according to its plain and ordinary meaning, except as to those terms defined
17 in the 2015 Permit, the Clean Water Act, or specifically herein.

18 52. Choice of Law. The laws of the United States shall govern this Consent
19 Decree.

20 53. Severability. In the event that any provision, paragraph, section, or
21 sentence of this Consent Decree is held by a court to be unenforceable, the validity of
22 the enforceable provisions shall not be adversely affected.

23 54. Correspondence. All notices required herein or any other correspondence
24 pertaining to this Consent Decree shall be sent by regular mail or electronic mail as
25 follows:

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1 If to Plaintiff:

2 Jesse C Swanhuyser
3 ANACAPA LAW GROUP, INC.
4 508 East Haley Street
5 Santa Barbara, CA 93103
6 jswanhuyser@alg.law

7 With copies to:

8 Jane Williams, Executive Director
9 California Communities Against Toxics
10 P.O. Box 845
11 Rosamond, CA 93560
12 deapjane@aol.com

13 If to Defendant:

14 William W. Funderburk
15 Castellón & Funderburk LLP
16 811 Wilshire Blvd Ste 1025
17 Los Angeles, CA 90017-2649
18 wfunderburk@candffirm.com

19 With copies to:

20 Robert Lewis, President
21 Matco Forge, Inc.
22 16443 Minnesota Ave
23 Paramount, California 90723
24 rlewis@matteoforge.com

25 Notifications of communications shall be deemed submitted three (3) days after the date
26 that they are postmarked and sent by first-class mail, or immediately after
27 acknowledgement of receipt via email by the receiving party. Any change of address or
28 addresses shall be communicated in the manner described above for giving notices.

29 55. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent
30 Decree, warrant or aver in any manner that the Defendant's compliance with this
31 Consent Decree will constitute or result in compliance with any federal or state law or
32 regulation. Nothing in this Consent Decree shall be construed to affect or limit in any
33 way the obligation of the Defendant to comply with all federal, state, and local laws and
34 regulations governing any activity required by this Consent Decree.

35 56. Counterparts. This Consent Decree may be executed in any number of
36 counterparts, all of which together shall constitute one original document. Telecopy
37 and/or facsimile copies of original signature shall be deemed to be originally executed
38 counterparts of this Consent Decree.

39 57. Modification of the Consent Decree. This Consent Decree, and any
40 provisions herein, may not be changed, waived, discharged, or terminated unless by a
41 written instrument, signed by the Parties.

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1 58. Full Settlement. This Consent Decree constitutes a full and final settlement
2 of this matter.

3 59. Integration Clause. This is an integrated Consent Decree. This Consent
4 Decree is intended to be a full and complete statement of the terms of the agreement
5 between the parties and expressly supersedes any and all prior oral or written
6 agreements, covenants, representations, and warranties (express or implied) concerning
7 the subject matter of this Consent Decree.

8 60. Authority. The undersigned representatives for Plaintiff and Defendant
9 each certify that s/he is fully authorized by the party whom s/he represents to enter into
10 the terms and conditions of this Consent Decree.

11 61. The provisions of this Consent Decree apply to and bind the Parties,
12 including any successors or assigns. The Parties certify that their undersigned
13 representatives are fully authorized to enter into this Consent Decree, to execute it on
14 behalf of the Parties, and to legally bind the Parties to its terms.

15 62. The Parties agree to be bound by this Consent Decree and not to contest its
16 validity in any subsequent proceeding to implement or enforce its terms. By entering
17 into this Consent Decree, the Defendant does not admit liability for any purpose as to
18 any allegation or matter arising out of this Action.

19 IN WITNESS WHEREOF, the undersigned have executed this [Proposed] Consent
20 Decree as of the date set forth below.

21 | ANACAPA LAW GROUP, INC.

22 by: Jesse Swanhuyser
23 Jesse Swanhuyser
24 Attorney for Plaintiff

25 | Date: Feb 5, 2018

CASTELLÓN & FLUNDERBURK LLP

by: William Funderburk
Attorney for Defendant

Date: 262, 2018

Consent Decree and Order

Dated: April 10, 2018

IT IS SO ORDERED.

Hon. Terry J. Hatter, Jr.

U. S. DISTRICT JUDGE

1 CA COMMUNITIES AGAINST TOXICS

2 by: Jane Williams

3 Jane Williams
4 Executive Director

5 Date: Feb 5, 2018

MATTCO FORGE, INC.

by: R. Lewis

Robert Lewis
President

Date: Feb 5, 2018

7 IT IS SO ORDERED:

8 Date: _____

9 Honorable Terry J. Hatter
10 DISTRICT COURT JUDGE
11 CENTRAL DISTRICT OF CALIFORNIA